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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/656,428

09/05/2003

John F. Poccia III

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EXAMINER

CHAPMAN, GINGER T

ART UNIT

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/656,428	<b>Applicant(s)</b> POCCIA ET AL.	
	<b>Examiner</b> Ginger T. Chapman	<b>Art Unit</b> 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 05 September 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,3,5 and 7-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3,5 and 7-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Status of the claims***

1. Claims 2, 4, 6 and 11-20 are cancelled, claims 1, 3, 5 and 7-10 are pending in the application.

### ***Response to Arguments***

2. Applicant's arguments filed September 5, 2008 have been fully considered but they are not persuasive.

3. Applicant argues the following:

4. I. The selection of particular ranges of absorbent and non-absorbent fibers and the selection of a particular range of fabric density is not routine experimentation. Applicants state that the previous Office action maintains that one of ordinary skill would recognize characteristics and/or benefits associated with selection of specific ranges but the action fails to provide any teachings or information from the prior art to support such a position and Applicants request that such information be identified on the record.

5. II. The instant claims are not *prima facie* obvious because the fabrics claimed by Applicants exhibit synergistic properties of absorbency, coupled with reduced removal force. These properties are sufficient to overcome a claim of *prima facie* obviousness.

6. These arguments are not persuasive for the following reasons:

7. I. With respect to range of fabric density, the prior art expressly teaches the claimed range of fabric density. See claim 1, *infra*.

8. With respect to the range of percentages of absorbent to non-absorbent fibers, the Supreme Court has held that rationales to support rejections under 35 USC § 103, prior art is not

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limited just to the references being applied, but includes the understanding of one of ordinary skill in the art. The prior art reference (or references when combined) need not teach or suggest all the claim limitations, however, Office personnel must explain why the difference(s) between the prior art and the claimed invention would have been obvious to one of ordinary skill in the art. The “mere existence of differences between the prior art and an invention does not establish the invention’s nonobviousness. *Dann v. Johnston*, 425 US 219 (1976).

9. The gap between the prior art and the claimed invention may not be “so great as to render the [claim] nonobvious to one reasonably skilled in the art.” *Id.* In determining obviousness, neither the particular motivation to make the claimed invention nor the problem the inventor is solving controls. The proper analysis is whether the claimed invention would have been obvious to one of ordinary skill in the art after consideration of all the facts. Factors other than the disclosures of the cited prior art may provide a basis for concluding that it would have been obvious to one of ordinary skill in the art to bridge the gap.

10. Under 35 U.S.C. 103(a), the obviousness of an invention cannot be established by combining the teachings of the prior art references absent some teaching, suggestion, incentive, or predictability supporting the combination. This does not mean that the cited prior art references must specifically suggest making the combination.

11. Rather, the test for obviousness is what the combined teachings of the prior art references would have suggested to those of ordinary skill in the art. This test requires it be taken into account not only the specific teachings of the prior art references, but also any inferences which one skilled in the art would reasonably be expected to draw therefrom. A patent for a combination, which only unites old elements with no change in their respective functions,

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obviously withdraws what is already known into the field of its monopoly and diminishes the resources available to skillful men. Where the combination of old elements performed a useful function, but it added nothing to the nature and quality of the subject matter already patented, the patent fails under 35 U.S.C. 103(a). It has been held that a combination which only unites old elements with no change in their respective functions, with each performing the same function it had been known to perform and yields no more than one would expect from such an arrangement, is precluded from patentability under 35 USC 103(a). *Sakraida v. AG Pro, Inc.*, 425 U. S. 273 (1976).

12. One of ordinary skill in the art would recognize that a characteristic of absorbent fibers is the ability to absorb liquids. One of ordinary skill in the art would recognize that a characteristic of non-absorbent fibers is a reduced or lack of ability to absorb liquid. One of ordinary skill in the art would recognize that increasing the percentage of absorbent fibers in a fabric would increase the absorbent capacity of the fabric while decreasing the percentage of absorbent fibers in a fabric would decrease the absorbent capacity of the fabric. Conversely, increasing the ratio of non-absorbent fibers to absorbent fibers in a fabric would reduce the absorbency of a fabric.

13. II. With respect to the properties of absorbency and reduced removal force, the prior art discloses the substantially identical fibers formed in the substantially identical manner.

Therefore there is reasonable basis that the prior art exhibits properties of absorbency and reduced removal force. See Sun at c. 4, ll. 12-13 and ll. 25-27 and c. 6, Example 2 "Wound Release Test". See also c. 7, Example 3 and c. 8, Example 4 "Absorbency Test" & "Moisture Evaporation Rate".

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14. Additionally, the examiner notes that the properties of absorbency and reduced removal force are not in the claims, therefore Applicants' arguments are more specific than the claims.

***Claim Rejections - 35 USC § 103***

15. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

16. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

17. Claims 1, 3, 5, and 7-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sun et al (US 6,600,085 B2).

18. With respect to claim 1, Sun teaches an adhesive bandage (figs. 4 & 5) comprising a wound contacting pad (c. 4, l. 17), comprising: an absorbent nonwoven fabric 24 comprising absorbent fibers and synthetic non-absorbent fibers, the absorbent fibers selected from the group consisting of rayon, cotton, wood pulp (c. 1, ll. 58-59), and the synthetic non-absorbent fibers selected from the group consisting of polyolefins, polyamides and polyesters (c. 1, ll. 60-61), said nonwoven fabric having a basis weight from about 30 gsm to about 150 gsm (c. 2, ll. 11-13),

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said nonwoven fabric having a first major surface 26 and a second major surface 25 (c. 4, ll. 66-67); and an apertured film 28, 32 secured to at least one major surface 25, 26 of the nonwoven fabric 24.

19. Sun discloses the claimed invention except for the specifically claimed ranges of percent fibers and density.

20. With respect to the ranges of percentages of fibers, optimization of parameters within prior art ranges or through routine experimentation is not sufficient to patentably distinguish the invention over the prior art. MPEP § 2144.05. One of ordinary skill in the art would have recognized that increasing the percentage of absorbent fibers and the density of absorbent material would increase the absorbent capacity of the absorbent core, while reducing it would result in less cost or bulkiness. One of ordinary skill in the art would also have recognized that increasing the percentage of absorbent fibers would result in greater absorption of wound exudates while increasing the percentage of non-absorbent fibers would result in faster strike through time and therefore a drier body contacting surface of a bandage. Additionally, one of ordinary skill in the art would have recognized the benefit of optimizing the absorbency of different layers depending on their function as absorbent or body-contacting layers.

21. Sun discloses the substantially identical fibers used as an absorbent fabric, therefore it would have been obvious to one of ordinary skill in the art to comprise a fabric in the claimed range of percentages for a range of absorbencies since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

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22. With respect to claim 3, Sun teaches the fibers comprising the nonwoven fabric are bicomponent fibers (c. 1, ll. 61-62).

23. With respect to claim 5, Sun teaches the apertured film comprises a polymeric material selected from polyethylene, metallocene catalyzed polyethylene, polypropylene and copolymers thereof, and ethylene vinyl acetate copolymers (c. 2, ll. 34-37).

24. With respect to claims 7 and 8, Sun teaches an open area of the apertured film ranges from about 5 percent to about 30 percent of the total area of the apertured film (c. 4, l. 23).

25. With respect to claim 9, Sun teaches a top layer 32 secured to the second major surface of the nonwoven fabric 24.

26. With respect to claim 10, Sun teaches the top layer of material is a microporous film (c. 4, l. 23).

### ***Conclusion***

27. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.



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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ginger T. Chapman whose telephone number is (571)272-4934.

The examiner can normally be reached on Monday through Friday 9:30 a.m. to 6:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Ginger T Chapman/  
Examiner, Art Unit 3761  
12/02/08

/Tatyana Zalukaeva/  
Supervisory Patent Examiner, Art Unit 3761